## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

BYRON MARTIN, : Plaintiff, :

:

v. : File No. 1:05-CV-28

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STEVEN GOLD, PAUL BROSSEAU, KEITH TALLON, ELLEN McWARD, MICHAEL FOISY, JAMES KAMEL, STEPHEN LAVOIE, DUSTIN WARBURTON, KEITH REILLY, THOMAS POWELL, DIANE BOGDAN, DR. PAUL COTTON, DR. LABATTI,

DR. PAUL COTTON, DR. LABATTI, :
ROBERT HOFMAN, RICHARD BESS, :
SUE JAMES, TRINA NUTTER, and :
CELESTE GIRRELL. :

Defendants. :

## <u>ORDER</u>

The Magistrate Judge's Report and Recommendation was filed December 22, 2005 (Paper 66). After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). The State Defendants' motion to dismiss and/or for summary judgment on Martin's psychiatric care claims (Papers 21 and 34) is GRANTED. Defendant Cotton's motions to dismiss (Papers 28, 35, and 58) are GRANTED, and all claims against Cotton are DISMISSED without prejudice. All claims against defendant Labatti are also DISMISSED without prejudice. Additionally, the State Defendants' motion to dismiss Martin's claim for declaratory relief with respect to his "bad day" claim (Paper 34 at 18-20) is DENIED. Finally, Martin's motion to add defendants (Paper 56), motion for

appointment of counsel (Paper 64), and motion to shorten the discovery schedule deadlines (Paper 60) are DENIED.

This Order resolves the issues which remain following the Order adopting the first Report and Recommendation (Papers 55 and 57). The matter is hereby returned to the Magistrate Judge for further proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 27<sup>th</sup> day of February, 2006.

/s/ J. Garvan Murtha

J. Garvan Murtha United States District Judge